



DEPARTMENT OF COMMERCE

Office of the Under-Secretary for Economic Affairs

15 CFR Chapter XV

[Docket No.: 210422-0086]

RIN 0605-AA56

Concrete Masonry Products Research, Education and Promotion Order; Referendum Procedures

AGENCY: Under Secretary for Economic Affairs, United States Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule establishes procedures for conducting a referendum to determine whether manufacturers of concrete masonry units (manufacturers) favor the issuance of a Concrete Masonry Products Research, Education, and Promotion Order (Order). The purpose of the Order would be to strengthen the position of the concrete masonry products industry in the domestic marketplace; maintain, develop, and expand markets and uses for concrete masonry products in the domestic marketplace; and promote the use of concrete masonry products in construction and building. The Department will publish a proposed Order that will become final if approved by referendum.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Registration to participate in the referendum begins May 4, 2021, and will continue though midnight of the day prior to the first day of the referendum period (*see* SUMMARY OF

FINAL RULE below). The Department will announce the referendum period along with a final proposed Order in a separate notification in a later **FEDERAL REGISTER**.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Thompson, Communications for the Commerce Checkoff Implementation Program, Office of the Under Secretary for Economic Affairs, telephone: (202) 482-0671 or via electronic mail: michael.thompson1@trade.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the Concrete Masonry Products Research, Education, and Promotion Act of 2018, 15 U.S.C. 8701 *et seq.* (the Act), the Department is enacting a research, education, and promotion program (commonly referred to as a checkoff program) for concrete masonry products. The Act also authorizes the Secretary to “issue such regulations as may be necessary to carry out [the Act] and the power vested in the Secretary under [the Act].” 15 U.S.C. 8713. The Act specifically authorizes the Secretary to conduct the referendum, and states that “[referenda ... shall be conducted in a manner determined by the Secretary.” 15 U.S.C. 8706(c)(1).

As part of this rulemaking process, the Department published 1) a proposed Order (85 FR 52059, August 24, 2020), and 2) proposed referendum procedures (85 FR 65288 October 15, 2020). This rule finalizes the referendum procedures for which the comment period expired on November 16, 2020. The Department received comments from five commenters regarding the proposed referendum procedures (see below for comments and responses).

Executive Order 12866

This rulemaking is not a significant regulatory action under Executive Order 12866. Because it is not a significant action under Executive Order 12866, it is not subject to Executive Order 13771.

Summary of Final Rule

The Department will conduct a referendum in 2021 (the Department will publish the dates when it publishes the second proposed Order). Each manufacturer eligible to vote in the

referendum is entitled to one vote. The Department will use Employer Identification Numbers (EINs) to identify manufacturers, with each manufacturer EIN entitled to a vote. The use of EINs will prevent duplicate voting and provide a clear method for listing manufacturers. For the order to go into effect, there must be a majority “yes” vote by both: (1) the total number of concrete masonry unit manufacturers voting, and (2) manufacturers who operate a majority of the machine cavities operated by the manufacturers voting in the referendum. Manufacturers must register prior to midnight of the day prior to the start of the referendum period in order to vote.

This final rule notifies all interested voters that they must register prior to the beginning of the referendum period. For the initial referendum the Department will mail registration forms to those manufacturers of concrete masonry units of which it is aware. The Department also will make the registration form available on the Department of Commerce website (<https://www.commerce.gov/bureaus-and-offices/ousea/concrete-masonry-checkoff>) or by email request to Checkoff@doc.gov. Based on the registration, the Department will provide ballots to eligible voters. For the initial referendum the Department will mail ballots to eligible, registered manufacturers. For a manufacturer to be eligible they must have manufactured concrete masonry units within 180 days of the referendum period. During the referendum, the Department will collect and review all ballots received and determine whether any ballots are invalid and should not be counted. After tallying all valid ballots, the Department will prepare a report on the referendum and announce the results to the public. The Department would use these same procedures for any subsequent referendum under the Act. For any future proposed orders, voter eligibility would be based on the scope of such proposed orders.

Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA), first enacted in 1980 and codified at 5 U.S.C. 600-611, was intended to place the burden on the government to review all new regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization can have a bearing on its ability to comply with Federal regulations. Major goals of the RFA are: 1) to increase agency awareness and understanding of the impact of their regulations on small business; 2) to require that agencies communicate and explain their findings to the public; and 3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action. The Department published an Initial Regulatory Flexibility Analysis (IRFA) in the proposed rule and described the impact of the proposed rule on small entities. The final Regulatory Flexibility Analysis follows.

Basis and Purpose of the Rule

This action is taken under the authority of the Act, which authorizes a research, education, and promotion program for concrete masonry products, also known as a checkoff program. The Secretary will establish this checkoff program by issuance of an order issued that is subject to approval by an industry referendum. If industry approves of the order, the program would then be carried out by a Board, which would develop research and education programs as well as efforts to promote concrete masonry products in domestic markets. Board activities would be funded by assessments on manufacturers of concrete masonry products, based on the number of masonry units sold each quarter. The Department published the proposed order in the *Federal Register* on August 24, 2020 (85 FR 52059). That document discussed the objectives of and legal basis for the proposed order and are not repeated here.

This rule establishes procedures for conducting a referendum to determine whether manufacturers of concrete masonry units favor the issuance of the order. The Department of Commerce will conduct the referendum. The Secretary will implement this program if the Secretary determines that a majority of manufacturers voting who also represent a majority of the machine cavities in operation of those manufacturers voting in the referendum are in favor of the program. The Department will use these procedures for any subsequent referendum under the Order.

A statement of the significant issues raised by public comments or by the Chief Counsel for Advocacy of the Small Business Administration in response to the initial regulatory flexibility analysis

The Department received one comment that pointed out an apparent inaccuracy in the total employment number 6,344 jobs, as depicted in table 3 in the IRFA. The Department recognizes the table can cause confusion. The Department provided a footnote and hyperlink from the Census Bureau (<https://www.census.gov/programs-surveys/susb/about/glossary.html>) that provides additional explanation of information in the table. The relevant additional information is provided below:

Enterprise: An enterprise (or "company") is a business organization consisting of one or more domestic establishments that were specified under common ownership or control. The enterprise and the establishment are the same for single-establishment firms. Each multi-establishment

company forms one enterprise - the enterprise employment and annual payroll are summed from the associated establishments.

Enterprise Size: Enterprise size designations are determined by the summing employment of all associated establishments. Employer enterprises with zero employees are enterprises for which no associated establishments reported paid employees in the mid-March pay period but paid employees at some time during the year.

Firm: A firm is a business organization consisting of one or more domestic establishments in the same geographic area and industry that were specified under common ownership or control. The firm and the establishment are the same for single-establishment firms. For each multi-establishment firm, establishments in the same industry within a geographic area will be counted as one firm; the firm employment and annual payroll are summed from the associated establishments.

One company or business can have multiple firms. Of the 430 firms noted in the table, 401 firms or 93 percent came from companies with fewer than 500 employees. And these 401 firms accounted for 514 establishments, or 75 percent of all establishments and 62 percent of employment across the industry in the United States.

A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available

This final rule applies to products manufactured on concrete block machines and used for construction. As indicated by the data below and confirmed by industry experts, the industry is dominated by small entities.

The U.S. Small Business Administration size standard to qualify as a small business for Federal Government programs is 500 or fewer employees in this industry.¹ According to Census Bureau data, there were 430 firms and 686 establishments engaged in concrete block and brick manufacturing in 2017.² Of these, 401 firms, or 93 percent, employed fewer than 500 employees, and these small firms accounted for 514 establishments, or 75 percent of all establishments and 62 percent of industry employment.³ Note that a single company or business can have multiple firms, and a single firm can have multiple establishments.

¹ See “Table of Small Business Size Standards Matched to North American Industry Classification System Codes” on the U.S. Small Business Administration website. For the economic analysis the Department used statistics for the North American Industry Classification System (NAICS) code 327331, concrete block and brick manufacturing.

² A firm is a business organization consisting of one or more domestic establishments in the same state and industry that were specified under common ownership or control and an establishment is a single physical location at which business is conducted or services or industrial operations are performed. See “Statistics of U.S. Businesses Glossary” on the U.S. Census Bureau website.

³ See “2017 SUSB Annual Data Tables by Establishment Industry” on the U.S. Census Bureau website. For more information, see the County Business Patterns methodology on the Census website.

Table 3: Block and Brick Manufacturers 2017 by Business Size					
Size of business by number of employees	Number of firms	Number of establishments	Employment	Estimated receipts (\$mils)	Annual payroll (\$mils)
Total	430	686	16,575	4,682	814
0-4	92	92	173	56	9
5-9	66	66	432	97	19
10-19	83	87	1,168	277	56
20-99	116	152	3,851	922	185
100-499	44	117	4,607	1,506	251
500+	29	172	6,344	1,823	293
Source: U.S. Census Bureau 2017 County Business Patterns and 2017 Economic Census, Table US_6digitnaics_2017, released 03/06/2020					

A description of the projected reporting, recordkeeping, and other compliance requirements of the rule to Affected Entities

This action would impose a reporting burden on eligible manufacturers of concrete masonry units. To participate in the referendum, eligible manufacturers would register with the Department in advance of the referendum period. Eligible manufacturers would have the opportunity to complete and submit a ballot to the Department indicating whether or not they favor implementation of the proposed order. The specific burdens for registration and the ballot are detailed later in this document in the section titled “Paperwork Reduction Act”.

There are no special skills required to complete the registration or ballot forms. The Department estimates that the respondent burden of the referendum is 0.5 hours for registration and 0.25 hours to complete the ballot and that approximately 690 small businesses will be affected. This results in a total estimated burden on small businesses of 517.5 hours. According to the Bureau of Labor Statistics, the median pay for industrial production managers is \$50.71 per hour.⁴ Thus, the Department estimates that the cost to firms of participating in the referendum will average \$38.03.

A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes

To minimize the respondent burden, the Department plans to create simple forms for ease of registration and voting. Further, the Department plans to allow registration and voting by mail or fax - at the choice of the respondent.

In order to comply with the statutory requirements of the Act, there are no possible alternatives to this final rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Department submitted to the Office of Management and Budget (OMB) for approval the

⁴ See the *Occupational Outlook Handbook* on the Bureau of Labor Statistics website, <https://www.bls.gov/ooh/>.

information collection requests associated with this rulemaking. OMB approved the information collection requests under OMB Number 0605-0029.

Title: Concrete Masonry Products Research, Education, and Promotion Order; Referendum procedures.

OMB Number: 0605-0029.

Expiration Date of Approval: May 3, 2024.

Type of Request: New information collection for research, education and promotion programs.

Abstract: The Department seeks to establish an orderly program for developing, financing, and carrying out an effective, continuous, and coordinated program of research, education, and promotion to support the concrete masonry products industry. The Department has published a proposed Order in the Federal Register to establish the program. The purpose of the proposed Order is to strengthen the position of the concrete masonry products industry in the domestic marketplace; maintain, develop, and expand markets and uses of concrete masonry products in the domestic marketplace; and promote the use of concrete masonry products in construction and building. The proposed Order allows a Concrete Masonry Products Board (Board) made up of industry members appointed by the Secretary of Commerce (Secretary) to develop and implement programs of research, education, and promotion. The funding of the Board's activities and programs will be through assessments paid by manufacturers of concrete masonry units. The initial assessment will be \$.01 per concrete masonry unit sold.

The Secretary will hold a referendum among eligible manufacturers to determine whether they favor the implementation of the proposed Order. A final Order only will go into effect if the referendum results in the affirmative vote of a majority of those voting and also a majority of the block machine cavities in operation by those voting.

There are two forms in this information collection request relating to the referendum. The first is the registration form for the concrete referendum. The registration form may be submitted by eligible concrete masonry unit manufacturers and is necessary to ensure that the referendum is accurate and complete. Manufacturers only may participate in the referendum if they register. The second form relates to the ballot form for the concrete referendum. Eligible concrete masonry unit manufacturers may complete and submit the ballot to reflect their desire for or against implementing the order. Authorizing Statute: 15 U.S.C. Chapter 113 (sections 8701-8717).

Registration

Estimate of Burden: 0.5 hour per application.

Respondents: Manufacturers of concrete masonry units.

Estimated Number of Respondents: 690.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 345 hours.

The Department will add the registration form to the other information collections approved under OMB No. 0605-0029.

Ballot

Estimate of Burden: 0.25 hour per ballot.

Respondents: Manufacturers of concrete masonry units.

Estimated Number of Respondents: 690.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 172.5 hours.

The Department will add the ballot form to the other information collections approved under OMB No. 0605-0029.

The Department published a proposed rule regarding the referendum procedures in the Federal Register on October 15, 2020 (85 FR 65288). The Department made available copies of the rule through the Office of the Federal Register also via the Internet at <http://www.regulations.gov>. That rule provided for a 30-day comment period.

In the proposed rule, the Department invited comments on the information collection requirements prescribed in the Paperwork Reduction Act section of this rule. Specifically, the Department solicited comments on: (a) Whether these information collection requirements (ICRs) are necessary for the proper performance of the functions of the Department, including whether the information has practical utility; (b) the accuracy of the Department's estimates of the burden of the ICRs; (c) the quality, utility, and clarity of the information to be collected; and (d) whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. One commenter stated that the industry should have been provided the opportunity to review the actual forms. The Department published in its proposed rule (85 FR 65288, October 15, 2020) that it will restrict the information collection request to that information needed to ensure eligibility of the registrant and voter to participate (two forms – a

registration and the ballot) in the referendum and then the notice accurately described the types of information the forms will require. The public had a chance to comment on the information collection request during the public comment period.

Pursuant to 5 U.S.C. 553(d)(3), the Department finds that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because this rule must be in effect for the Department to allow registration for those desiring to participate in the referendum. Additionally, the regulated entities are not harmed by an immediate effective date because this rule 1) does not impose any requirements on regulated entities that require preparation, and 2) provides at least 30 days for affected entities to register prior to the beginning of the referendum period.

Summary of Public Comments and the Department's Responses

The Department published the proposed rule concerning this action in the Federal Register on October 15, 2020 (85 FR 65288) and provided a 30-day comment period ending November 16, 2020. The Department received comments from five commenters, one of which was a duplicate. One fully supported the proposed Order and referendum procedures, one was generally opposed to the order and referendum, and two were in support but desired further clarity. The comments are addressed in the following paragraphs.

Comments in Full Support

Comment:

The Department received one comment which supported the proposed Order with no changes. The commenter noted that passing the referendum will be a critical variable in the success of their business and customers.

Response:

The Department appreciates the comment.

Comments in support, with recommendation

Comment:

One commenter noted that under the instruction found in §1500.103(b) under the types of information the Department did not include the “machine” when referring to cavities.

Response:

The missing word “machine” was inadvertent, and the Department will add “machine” to the final referendum procedures rule.

Comment:

One commenter requested the Department make explicit on registration forms that the registrant only count machine cavities used to manufacture concrete masonry units.

Additionally, the commenter requests that registration forms and communications are clear that only those EINs under which machine cavities are being used to manufacture concrete masonry units be considered eligible to participate in the referendum.

Response:

The Department agrees with both of these comments. Registration forms will state that registrants only count machine cavities used to manufacture concrete masonry units, and registration forms and other relevant communications will state that only those EINs under which machine cavities are being used to manufacture concrete masonry units be considered eligible to participate in the referendum.

Comments Generally Opposed

Comment:

One commenter recommended the Department better refine reporting of machine cavities, distinguishing between machines producing concrete masonry units from those designed for dual purpose. The commenter states that “[a]dvancements in the technology of these manufacturing machines has made it possible to interchange molds between concrete masonry units and pavers on the same machine. Thus, a block machine that normally is used to produce pavers could be used to manufacture one concrete masonry unit for the sole purpose of qualifying for the referendum.”

Response:

The commenter differentiates those machines that have convertible capacity from those normally associated with concrete masonry unit (CMU) production using the phrase “traditional concrete masonry unit cavities”. While the Department understands the commenter’s desire to constrain those cavities eligible to count toward the total participating, the statute clearly does not make any such distinction. The term “machine cavities in operation” means those machine cavities associated with a block machine that have produced concrete masonry units within the last 6 months of the date set for determining eligibility and is fully operable and capable of producing concrete masonry units. The Department interprets the statute in accordance with

accepted principles of statutory construction. Therefore, a manufacturer may include in its cavity count total those cavities that have produced concrete masonry units within six months of the referendum, regardless of whether it is on a machine designed for the dual purpose or sole purpose of making concrete masonry units.

Both the registration form and ballot form are official government forms. Both have the following statement: the making of any false statement or representation on this form, knowing it to be false, is a violation of Title 18, Section 1001 United States Code, which provides for the penalty of a fine of \$10,000 or imprisonment of not more than five years or both.

Comment:

The Department received a comment voicing concern at the introduction of the new terms “Lead Executive” and “Agent.” Another commenter voiced concern on both the impartiality of the agents as well as lack of oversight of the vote.

Response:

The statute grants the Secretary the authority to determine the manner in which to conduct the referendum. Agents that will conduct the referendum are employees of the Department of Commerce. The Lead Executive is a member of the Senior Executive Service and will oversee the vote count and report the results to the Secretary. The Department will amend its definition to make clear the Lead Executive is a member of the Senior Executive Service and agents are employees of the Department of Commerce.

Comment:

The Department received another comment that the referendum procedures should include more specificity concerning the initial referendum.

Response:

As the commenter notes, these rules apply to all future referenda and therefore purposely provide the Secretary the latitude to make adjustments to the process. For example, the Department will allow voters to cast ballots by mail-in and fax for the initial referendum. However, advancements in technology may allow subsequent referenda to occur online or using voting software. To help clarify its intent on casting ballots, the Department will add possible examples of ballot casting methods. Similarly, the referendum period will change for subsequent referenda, and the Department will provide adequate advance notice for any such changes in the Federal Register.

Comment:

One commenter disagreed with the language that “Agents will not refuse a ballot to any person who claims to be eligible to vote” in proposed § 1500.103(e).

Response:

This language was meant to reinforce the requirement to register in advance of the voting period. However, the Department recognizes the potential confusion and will remove this clause from the final referendum procedures rule. With regard to voter eligibility, the Department makes explicit that if the Department requests, manufacturers shall provide proof of sales, proof of cavities in operation, or any other such proof the Department deems necessary to establish voting eligibility. Failure to provide the requested proof to the Department will result in ineligibility to participate in the referendum.

Comment:

One commenter thought the Department should ensure that all eligible producers be notified and guaranteed a vote in the referendum and that the Department have specific plans in place to ensure eligible manufactures receive proper notice of the referendum. Another commenter thought the Department should publish a listing of “pros and cons” of check off programs as an aid to voters.

Response:

The Department will notify the public of any proposed rules through publication in the Federal Register. Such notification in the Federal Register provides constructive notice to the public, will specify the legal authority to issue the notice, and gives the notice and procedures status. The Department is not responsible to individually notify each manufacturer nor would such individual notification allow for full public review and comment. Further, the Department is responsible to enact legislation as it is written and does not as a matter of practice issue “pros and cons” of its rulemaking. The Department will publish all notifications of its actions in the Federal Register with fulsome explanations of the considered action to encourage public comment.

Comment:

One commenter asked the Department to make explicit the role of the Concrete Masonry Products Board in future referenda. Specifically, the comment dealt with the possibility of expanding the scope of the order to include additional products.

Response:

Whether the Order goes into effect will be dependent only on the results of a completed referendum. Unilaterally expanding the scope of the Order would be beyond the powers and duties of the Board and would require a subsequent referendum on the new proposed Order. In short, any future expansion of the scope of the Order would require the Department to conduct a referendum, with voter eligibility being based on the scope of such proposed order.

Comment:

One commenter made a point to show the Department has missed several deadlines as outlined in the statute.

Response:

While the Department strives for strict adherence to all prescribed deadlines, the Department has diligently worked to implement the statutory requirements and will continue to implement regulations to further the statutory intent of in the most expeditious manner possible.

Comment:

One commenter felt that voter eligibility as outlined in the proposed order was inconsistent with the statute because it did not include manufacturers of concrete masonry products. The commenter requested that the Department provide clarity on voter eligibility.

Response:

Only manufacturers of concrete masonry units are subject to assessment, and therefore, only manufacturers of concrete masonry units are eligible to participate in the referendum if they have produced concrete masonry units within 180 days of the start of the referendum period. The proposed Order is thus consistent with the statute and provides that manufacturers of concrete masonry products that are subject to an assessment are eligible to participate in the referendum.

Additional Comments

The Department received comments regarding suggestions for changes to the proposed Order that did not address the subject of referendum procedures. The Department did not make any change to the proposed referendum procedures based on those comments. The Department has considered these comments in finalizing the proposed Order and will address these comments in a future Federal Register document that announces and explains the final Order.

List of Subjects in 15 CFR Part 1500

Administrative practice and procedure, Advertising, Concrete masonry promotion, Consumer information, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, under the authority at 15 U.S.C. 8701–8717, the Office of the Under-Secretary for Economic Affairs, Department of Commerce, adds 15 CFR chapter

XV, consisting of part 1500, to read as follows:

CHAPTER XV—OFFICE OF THE UNDER-SECRETARY FOR ECONOMIC AFFAIRS, DEPARTMENT OF COMMERCE

PART 1500 – CONCRETE MASONRY RESEARCH, EDUCATION, AND PROMOTION

Subpart A [Reserved]

Subpart B—Referendum Procedures

Sec.

1500.100 General.

1500.101 Definitions.

1500.102 Voting.

1500.103 Instructions.

1500.104 Agents.

1500.105 Ballots.

1500.106 Referendum report.

1500.107 Confidential information.

1500.108 OMB control number.

Authority: 15 U.S.C. 8701–8717.

Subpart A [Reserved]

Subpart B—Referendum Procedures

Authority: 15 U.S.C. 8706.

§ 1500.100 General.

Agents will conduct a referendum in accordance with this subpart.

§ 1500.101 Definitions.

The following definitions apply to this subpart:

- (a) *Agent* means the Department of Commerce (Department) employee(s) the Secretary designates to conduct the referendum.
- (b) *Eligible manufacturer* means any person who is currently a manufacturer of concrete masonry units and has manufactured a concrete masonry unit within 180 days of the referendum period.
- (c) *Employer Identification Number* means the number generally issued to businesses by the U.S. Department of Treasury. An Employer Identification Number (EIN) is also known as a Federal Tax Identification Number and is used to identify a business entity. For more information on EINs and how to apply go to <https://www.irs.gov/businesses>.
- (d) *Lead Executive* means the individual or individuals the Secretary designates to oversee the conduct of the referendum and is a member of the Senior Executive Service.
- (e) *Referendum period* means the period of time, not less than 30 days, that the Secretary or his agent determines appropriate for conducting the referendum.
- (f) *Registration* means the form and process eligible manufacturers who wish to vote must complete and follow in order to vote. Voters must register by midnight of the day prior to the beginning of the referendum period.

§ 1500.102 Voting.

- (a) Each eligible manufacturer shall be entitled to cast one vote.

- (b) The order shall become effective only if the Secretary determines that the order has been approved by a majority of manufacturers voting who also represent a majority of the machine cavities in operation of those manufacturers voting in the referendum.
- (c) In order to vote, a manufacturer must register by midnight of the day prior to the start of the referendum period.
- (d) For referendum purposes the Department will use Employer Identification Numbers (EIN) to identify unique manufacturers.
- (e) An officer or employee of an eligible manufacturer, or an administrator, executor, or trustee of an eligible entity may cast a ballot on behalf of such entity provided that any individual so voting shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executor, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of an agent, the individual shall submit adequate evidence of such authority. The Secretary does not authorize proxy voting.
- (f) Voters are to cast ballots by the means specified by the Secretary, such means could include in person, mail-in, fax, via internet link, or through use of voting software. In the case of the initial referendum, the Department will use a combination of mail-in and fax to allow voters to cast ballots.
- (g) If the Department requests, manufacturers shall provide proof of sales, proof of cavities in operation, or any other such proof the Department deems necessary to establish voting eligibility. Failure to provide the requested proof to the Department will result in ineligibility to participate in the referendum.

§ 1500.103 Instructions.

The agent(s) shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Secretary. The Secretary may prescribe additional instructions, consistent

with the provisions of this subpart, to govern the procedure to be followed by the agent(s). Such agent(s) shall:

- (a) Determine the period during which voters may cast ballots;
- (b) Provide notification to allow interested voters to register in advance of the referendum period. The Department will restrict the information requested to that information needed to ensure eligibility of request or to participate in the referendum. Types of information will include name, contact information (address, phone number, email), status as a manufacturer of concrete masonry units, affirmation of having manufactured concrete masonry units within 180 days prior to the beginning of the referendum period, the number of machine cavities in operation, their Employer Identification Number, and similar identifying information;
- (c) Provide ballots and related material to voters for use in the referendum. The ballot shall provide for recording essential information, including information needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter. The Department will restrict the information requested to that information needed to determine a voter's eligibility. Information will include the name and address of the manufacturer, status as a manufacturer of concrete masonry units, affirmation that they have manufactured concrete masonry units within 180 days of the beginning of the referendum period, manufacturer Employer Identification Number, the number of machine cavities the manufacturer has in operation, and similar verification information;
- (d) Give reasonable public notice of the referendum:
 - (1) By using available media or public information sources, without incurring advertising expense, to publicize the dates, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to webinars and other such media vehicles; and
 - (2) By such other means as the agent may deem advisable;

- (e) Send to eligible manufacturers whose names and addresses are known to the agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed order;
- (f) At the end of the referendum period, collect, open, number, and review the ballots and tabulate the results in the presence of the Lead Executive authorized to monitor the referendum process;
- (g) Prepare a report on the referendum; and
- (h) Announce the results to the public.

§ 1500.104 Agents.

The Secretary may appoint agent(s) to conduct the referendum. Agent(s) may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions under this subpart. The agent authorizes each individual so appointed to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1500.105 Ballots.

(a) The agent(s) shall accept all ballots cast. However, if an agent determines a need for additional review for any reason, the agent shall endorse above the voter's signature on the ballot with a statement to the effect that the ballot needs additional scrutiny. The agent will attach to the ballot information regarding the reasons for additional review, the results of any investigations made with respect to the review, and the final disposition of the review. Agents will not count ballots found to be invalid or late, a non-exhaustive list of examples include:

- (1) The ballot is blank, missing a vote, has no signature;
- (2) Both voting boxes are marked in the vote section;
- (3) The ballot arrives after midnight of the last day of the referendum period;

(4) The ballot is in a state that agents cannot determine the vote; or

(5) The ballot has a name that is different on the ballot from that of the registered voter, except for votes cast by power of attorney with sufficient documentation to prove such power of attorney.

(b) As stated in § 1500.102(e), the Secretary does not authorize proxy voting. However, agents will accept power of attorney votes with proper documentation.

§ 1500.106 Referendum report.

Unless otherwise directed, the Lead Executive shall prepare and submit to the Secretary a report on the results of the referendum, the manner in which the agent(s) conducted the referendum, the kind of public notice given, and other information the Lead Executive finds pertinent to the analysis of the referendum and its results.

§ 1500.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1500.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq., is OMB control number 0605-0029.

Dated: April 23, 2021.

Kenneth White,

Senior Policy Analyst, Under Secretary for Economic Affairs.

